

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 220**

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**Introduced by Senator Yee**  
**(Coauthor: Senator DeSaulnier)**

February 23, 2009

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An act to amend Sections 8547.2, 8547.8, 19683, and 19683.5 of the Government Code, relating to whistleblower protections.

LEGISLATIVE COUNSEL'S DIGEST

SB 220, as amended, Yee. Whistleblower protection.

(1) The California Whistleblower Protection Act authorizes a state employee or an applicant for state employment to file a complaint, as specified, with the State Personnel Board alleging reprisal, retaliation, threats, coercion, or similar improper conduct prohibited under the act.

This bill would in addition provide that the act applies to former employees, as specified, and prohibits retaliation in the form of decreasing the job responsibilities of an employee's normal workload.

(2) Existing law provides that in addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure is liable in an action for damages brought against him or her by the injured party. However, any action for damages is not available to the injured party unless the injured party has first filed a complaint with the State Personnel Board, as specified, and the board has issued, or failed to issue, findings, as specified.

This bill would ~~instead eliminate the requirement that the board issue or fail to issue specified findings before an action for damages is authorized~~ *also require that when the injured party has requested a*

*right-to-sue notice from the board, as provided, that request must be made before an action for damages is available.* “Protected disclosure” would be defined to mean any good faith communication, including any communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence an improper governmental activity or any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was for the purpose of remedying that condition.

(3) Existing law provides that in any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof is on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee has a complete affirmative defense in the adverse action.

This bill would ~~instead~~ also provide that in an adverse action taken against an employee in which the employee demonstrates, by a preponderance of the evidence, that retaliation was a contributing factor to the adverse action taken against him or her, the employee shall have a complete affirmative defense to the adverse action.

This bill would also require the administrative law judge in an administrative action filed on or after January 1, 2009, to make a finding, after the plaintiff has completed presenting the evidence in his or her case in chief, of whether the plaintiff demonstrated by a preponderance of evidence that an activity protected by the California Whistleblower Protection Act was a contributing factor in the alleged retaliation against the complainant. The burden of proof would then shift to the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order.

(4) Existing law requires the State Personnel Board to initiate a hearing or investigation of a written complaint of reprisal or retaliation

that is prohibited by the California Whistleblower Protection Act within 10 working days of its submission. The executive officer is required to complete findings of the hearing or investigation within 60 working days thereafter and provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. Within 60 days after receiving notification regarding a prohibited act, the appointing power must either serve notice of adverse action, as specified, or set forth in writing its reasons for not doing so. Existing law permits the supervisor, manager, employee, or appointing power to request a hearing before the State Personnel Board regarding the findings of the executive officer if the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities. Existing law provides that every person who violates these provisions is guilty of a misdemeanor.

~~This bill would instead require the board, within 10 working days of receipt of a whistleblower retaliation complaint, to schedule the matter for an evidentiary hearing before an administrative law judge, as specified. This bill would also allow the board, upon written request of the aggrieved person, to issue a right-to-sue notice within 10 working days of submission of a written complaint, as provided, instead of initiating a hearing or investigation.~~ Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(5) Existing law provides that if, after the hearing described in (4) above, the State Personnel Board determines that a violation of the California Whistleblower Protection Act occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief.

This bill would specify that appropriate relief may include reasonable attorney's fees and costs for successful prosecution of a retaliation complaint before the board, and, at the employee's request and with the employee's consent, transfer to or placement in any vacant position for which the employee is qualified.

~~(6) Existing law requires the board, whenever it determines that a manager, supervisor, or employee, who is not named a party to the retaliation complaint, may have engaged in or participated in any act prohibited by these provisions, to notify the manager's, supervisor's,~~

~~or employee's appointing power of that fact in writing. Within 60 days after receiving the notification, the appointing power is required to either serve a notice of adverse action on the manager, supervisor, or employee, or set forth in writing its reasons for not taking adverse action against the manager, supervisor, or employee.~~

~~This bill would extend the timeframe within which the appointing power must take action, as specified, from 60 days to 4 months.~~

~~(7)~~

(6) Existing law requires a public entity that provides for the defense of a state employee charged with a violation of the California Whistleblower Protection Act to reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated the act, he or she is liable for all defense costs and is required to reimburse the public entity for those costs.

This bill would provide that if a state employee is successful in an action brought before the board pursuant to those provisions, the complaining employee shall be reimbursed for all costs incurred, including reasonable attorney's fees.

This bill would also require the administrative law judge to make any orders that may appear just in order to prevent any named party from being embarrassed, delayed, or put to unnecessary expense, and may make other orders as the interests of justice may require during the administrative hearing, in all cases.

The bill would also make technical, conforming changes to those provisions.

~~(8)~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) It is the public policy of this state to protect and safeguard
- 3 the right and freedom of all former, current, and prospective public
- 4 employees, as well as members of the public interacting with state

1 government, the California State University, and the University  
2 of California to report waste, fraud, abuse of authority, violation  
3 of law, or threat to public health and safety without restraint or  
4 fear of retribution or actual retribution due to having engaged in  
5 a protected disclosure reporting those government improprieties.

6 (b) Public servants best serve the citizenry when they can be  
7 candid and honest without reservation in conducting the people's  
8 business.

9 (c) The practice of restraining and retaliating against public  
10 servants by denying employment or contractual opportunity,  
11 decreasing the job responsibilities of an employee's normal  
12 workload, creating hostile work environments, and discriminating  
13 in the terms or conditions of employment or contract for these  
14 reasons foments unrest and dissatisfaction, deprives the state of  
15 the fullest use of its capacities for development and advancement,  
16 and substantially and adversely affects the interest of public  
17 employees, employers, and the public in general.

18 (d) The practice of restraining and retaliating against others  
19 because of their protected disclosure of improper governmental  
20 activities is declared to be against public policy.

21 (e) The purpose of this act is to provide effective, efficient  
22 remedies that will eliminate these retaliatory practices.

23 (f) This act shall be deemed an exercise of the police power of  
24 the state for the protection of the welfare, health, and peace of the  
25 people of this state.

26 SEC. 2. Section 8547.2 of the Government Code is amended  
27 to read:

28 8547.2. For the purposes of this article:

29 (a) "Employee" means any individual appointed by the Governor  
30 or employed or holding office in a state agency as defined by  
31 Section 11000, including, for purposes of Sections 8547.3 to  
32 8547.7, inclusive, any employee of the California State University.  
33 "Employee" includes any former employee who met the criteria  
34 of this subdivision during his or her employment.

35 (b) "Improper governmental activity" means any activity by a  
36 state agency or by an employee that is undertaken in the  
37 performance of the employee's official duties, whether or not that  
38 action is within the scope of his or her employment, and that (1)  
39 is in violation of any state or federal law or regulation, including,  
40 but not limited to, corruption, malfeasance, bribery, theft of

1 government property, fraudulent claims, fraud, coercion,  
2 conversion, malicious prosecution, misuse of government property,  
3 or willful omission to perform duty, or (2) is economically  
4 wasteful, or involves gross misconduct, incompetency, or  
5 inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10,  
6 and 8547.11, “improper governmental activity” includes any  
7 activity by the University of California or by an employee,  
8 including an officer or faculty member, who otherwise meets the  
9 criteria of this subdivision.

10 (c) “Person” means any individual, corporation, trust,  
11 association, any state or local government, or any agency or  
12 instrumentality of any of the foregoing.

13 (d) “Protected disclosure” means any good faith communication,  
14 including any communication based on, or when carrying out, job  
15 duties, that discloses or demonstrates an intention to disclose  
16 information that may evidence (1) an improper governmental  
17 activity or (2) any condition that may significantly threaten the  
18 health or safety of employees or the public if the disclosure or  
19 intention to disclose was for the purpose of remedying that  
20 condition.

21 (e) “Illegal order” means any directive to violate or assist in  
22 violating a federal, state, or local law, rule, or regulation or any  
23 order to work or cause others to work in conditions outside of their  
24 line of duty that would unreasonably threaten the health or safety  
25 of employees or the public.

26 (f) “State agency” is defined by Section 11000. “State agency”  
27 includes the University of California for purposes of Sections  
28 8547.5 to 8547.7, inclusive, and the California State University  
29 for purposes of Sections 8547.3 to 8547.7, inclusive.

30 *SEC. 3. Section 8547.8 of the Government Code is amended*  
31 *to read:*

32 8547.8. (a) A state employee or applicant for state employment  
33 who files a written complaint with his or her supervisor, manager,  
34 or the appointing power alleging actual or attempted acts of  
35 reprisal, retaliation, threats, coercion, or similar improper acts  
36 prohibited by Section 8547.3, may also file a copy of the written  
37 complaint with the State Personnel Board, *in accordance with the*  
38 *provisions of Section 19683*, together with a sworn statement that  
39 the contents of the written complaint are true, or are believed by  
40 the affiant to be true, under penalty of perjury. The complaint *shall*

1 ~~be filed with the board, shall be filed within 12 months of the most~~  
2 ~~recent act of reprisal complained about.~~ *set forth in the complaint.*

3 (b) Any person who intentionally engages in acts of reprisal,  
4 retaliation, threats, coercion, or similar acts against a state  
5 employee or applicant for state employment for having made a  
6 protected disclosure, is subject to a fine not to exceed ten thousand  
7 dollars (\$10,000) and imprisonment in the county jail for a period  
8 not to exceed one year. Pursuant to Section 19683, any state civil  
9 service employee who intentionally engages in that conduct shall  
10 be disciplined by adverse action as provided by Section 19572.

11 (c) In addition to all other penalties provided by law, any person  
12 who intentionally engages in acts of reprisal, retaliation, threats,  
13 coercion, or similar acts against a state employee or applicant for  
14 state employment for having made a protected disclosure shall be  
15 liable in an action for damages brought against him or her by the  
16 injured party. Punitive damages may be awarded by the court  
17 ~~where if~~ the acts of the offending party are proven to be malicious.  
18 Where liability has been established, the injured party shall also  
19 be entitled to reasonable attorney's fees as provided by law.  
20 However, any action for damages shall not be available to the  
21 injured party unless the injured party has first filed a complaint  
22 with the State Personnel Board pursuant to subdivision (a), and  
23 *either (1) the board has issued, or failed to issue, findings pursuant*  
24 *to Section 19683; or (2) the injured party requested a right-to-sue*  
25 *notice from the board pursuant to Section 19683.*

26 (d) This section is not intended to prevent an appointing power,  
27 manager, or supervisor from taking, directing others to take,  
28 recommending, or approving any personnel action or from taking  
29 or failing to take a personnel action with respect to any state  
30 employee or applicant for state employment if the appointing  
31 power, manager, or supervisor reasonably believes any action or  
32 inaction is justified on the basis of evidence separate and apart  
33 from the fact that the person has made a protected disclosure as  
34 defined in subdivision ~~(b)~~ (d) of Section 8547.2.

35 ~~(e) In any civil action or administrative proceeding, once~~  
36 ~~(1) Once~~ it has been demonstrated by a preponderance of evidence  
37 that an activity protected by this article was a contributing factor  
38 in the alleged retaliation against a former, current, or prospective  
39 employee, the burden of proof shall be on the supervisor, manager,  
40 or appointing power to demonstrate by clear and convincing

1 evidence that the alleged action would have occurred for legitimate,  
2 independent reasons even if the employee had not engaged in  
3 protected disclosures or refused an illegal order. If the supervisor,  
4 manager, or appointing power fails to meet this burden of proof  
5 in an adverse action against the employee in any administrative  
6 review, challenge, or adjudication in which retaliation has been  
7 demonstrated to be a contributing factor, the employee shall have  
8 a complete affirmative defense in the adverse action.

9 *(2) In an administrative action filed on or after January 1, 2010,*  
10 *the administrative law judge shall make a finding, after the plaintiff*  
11 *has completed presenting the evidence in his or her case in chief,*  
12 *of whether the plaintiff demonstrated by a preponderance of*  
13 *evidence that an activity protected by this article was a contributing*  
14 *factor in the alleged retaliation against the complainant. The*  
15 *burden of proof shall then shift to the supervisor, manager, or*  
16 *appointing power to demonstrate by clear and convincing evidence*  
17 *that the alleged action would have occurred for legitimate*  
18 *independent reasons even if the employee had not engaged in*  
19 *protected disclosures or refused an illegal order.*

20 *(3) In an adverse action taken against an employee in which*  
21 *the employee demonstrates, by a preponderance of the evidence,*  
22 *that retaliation was a contributing factor to the adverse action*  
23 *taken against him or her, the employee shall have a complete*  
24 *affirmative defense to the adverse action.*

25 (f) Nothing in this article shall be deemed to diminish the rights,  
26 privileges, or remedies of any employee under any other federal  
27 or state law or under any employment contract or collective  
28 bargaining agreement.

29 *SEC. 4. Section 19683 of the Government Code is amended to*  
30 *read:*

31 19683. (a) The State Personnel Board shall ~~initiate~~ *either:*

32 *(1) Initiate a hearing or investigation of a written complaint of*  
33 *reprisal or retaliation as prohibited by Section 8547.3 within 10*  
34 *working days of its submission. The executive officer shall*  
35 *complete findings of the hearing or investigation within 60 working*  
36 *days thereafter, and shall provide a copy of the findings to the*  
37 *complaining state employee or applicant for state employment and*  
38 *to the appropriate supervisor, manager, employee, or appointing*  
39 *authority. When the allegations contained in a complaint of reprisal*  
40 *or retaliation are the same as, or similar to, those contained in*



another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(2) *Upon the written request of the aggrieved person, issue a right-to-sue notice to the complaining person within 10 working days of submission of a written complaint of reprisal or retaliation as prohibited by Section 8547.3. The right-to-sue notice shall notify the complaining person of his or her right to file a civil action against any person who is subject to the provisions of Section 8547.3 within one year after the filing of the complaint with the State Personnel Board. The superior courts of the State of California shall have jurisdiction of those actions, and the complaining person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the complaining person would have worked but for the alleged unlawful practice. If the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office.*

(b) If the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing *described in subdivision (a)*, the State Personnel Board determines that a violation of Section 8547.3 occurred, ~~or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred,~~ the board may order any appropriate relief, including, but not limited to, *at the employee's request and with the employee's consent, transfer to or placement in any vacant position for which the employee is qualified, reasonable attorney's fees and costs for successful prosecution of a retaliation complaint before the State Personnel Board,* reinstatement, backpay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement

1 of any adverse records of the state employee or applicant for state  
2 employment who was the subject of the alleged acts of misconduct  
3 prohibited by Section 8547.3.

4 (d) Whenever the board determines that a manager, supervisor,  
5 or employee, who is named a party to the retaliation complaint,  
6 has violated Section 8547.3 and that violation constitutes legal  
7 cause for discipline under one or more subdivisions of Section  
8 19572, it shall impose a just and proper penalty and cause an entry  
9 to that effect to be made in the manager's, supervisor's, or  
10 employee's official personnel records.

11 (e) Whenever the board determines that a manager, supervisor,  
12 or employee, who is not named a party to the retaliation complaint,  
13 may have engaged in or participated in any act prohibited by  
14 Section 8547.3, the board shall notify the manager's, supervisor's,  
15 or employee's appointing power of that fact in writing. Within 60  
16 days after receiving the notification, the appointing power shall  
17 either serve a notice of adverse action on the manager, supervisor,  
18 or employee, or set forth in writing its reasons for not taking  
19 adverse action against the manager, supervisor, or employee. The  
20 appointing power shall file a copy of the notice of adverse action  
21 with the board in accordance with Section 19574. If the appointing  
22 power declines to take adverse action against the manager,  
23 supervisor, or employee, it shall submit its written reasons for not  
24 doing so to the board, which may take adverse action against the  
25 manager, supervisor, or employee as provided in Section 19583.5.  
26 A manager, supervisor, or employee who is served with a notice  
27 of adverse action pursuant to this section may file an appeal with  
28 the board in accordance with Section 19575.

29 (f) In order for the Governor and the Legislature to determine  
30 the need to continue or modify state personnel procedures as they  
31 relate to the investigations of reprisals or retaliation for the  
32 disclosure of information by public employees, the State Personnel  
33 Board, by June 30 of each year, shall submit a report to the  
34 Governor and the Legislature regarding complaints filed, hearings  
35 held, and legal actions taken pursuant to this section.

36 (g) *In all cases, including those in which individually named*  
37 *respondents have joined in a consolidated hearing, the*  
38 *administrative law judge shall make any orders that may appear*  
39 *just in order to prevent any named party from being embarrassed,*  
40 *delayed, or put to unnecessary expense, and may make other orders*

1 *as the interests of justice may require during the administrative*  
2 *hearing.*

3 ~~SEC. 3. Section 8547.8 of the Government Code is amended~~  
4 ~~to read:~~

5 ~~8547.8. (a) A state employee or applicant for state employment~~  
6 ~~who files a written complaint with his or her supervisor, manager,~~  
7 ~~or the appointing power alleging actual or attempted acts of~~  
8 ~~reprisal, retaliation, threats, coercion, or similar improper acts~~  
9 ~~prohibited by Section 8547.3, may also file a copy of the written~~  
10 ~~complaint with the State Personnel Board, in accordance with the~~  
11 ~~provisions of Section 19683, together with a sworn statement that~~  
12 ~~the contents of the written complaint are true, or are believed by~~  
13 ~~the affiant to be true, under penalty of perjury. The complaint shall~~  
14 ~~be filed with the board within 12 months of the most recent act of~~  
15 ~~reprisal set forth in the complaint.~~

16 ~~(b) Any person who intentionally engages in acts of reprisal,~~  
17 ~~retaliation, threats, coercion, or similar acts against a state~~  
18 ~~employee or applicant for state employment for having made a~~  
19 ~~protected disclosure is subject to a fine not to exceed ten thousand~~  
20 ~~dollars (\$10,000) and imprisonment in the county jail for a period~~  
21 ~~not to exceed one year. Pursuant to Section 19683, any state civil~~  
22 ~~service employee who intentionally engages in that conduct shall~~  
23 ~~be disciplined by adverse action as provided by Section 19572.~~

24 ~~(c) In addition to all other penalties provided by law, any person~~  
25 ~~who intentionally engages in acts of reprisal, retaliation, threats,~~  
26 ~~coercion, or similar acts against a state employee or applicant for~~  
27 ~~state employment for having made a protected disclosure shall be~~  
28 ~~liable in an action for damages brought against him or her by the~~  
29 ~~injured party. Punitive damages may be awarded by the court if~~  
30 ~~the acts of the offending party are proven to be malicious. Where~~  
31 ~~liability has been established, the injured party shall also be entitled~~  
32 ~~to reasonable attorney's fees as provided by law. However, any~~  
33 ~~action for damages shall not be available to the injured party unless~~  
34 ~~the injured party has first filed a complaint with the State Personnel~~  
35 ~~Board pursuant to subdivision (a).~~

36 ~~(d) This section is not intended to prevent an appointing power,~~  
37 ~~manager, or supervisor from taking, directing others to take,~~  
38 ~~recommending, or approving any personnel action or from taking~~  
39 ~~or failing to take a personnel action with respect to any state~~  
40 ~~employee or applicant for state employment if the appointing~~

1 power, manager, or supervisor reasonably believes any action or  
2 inaction is justified on the basis of evidence separate and apart  
3 from the fact that the person has made a protected disclosure as  
4 defined in subdivision (d) of Section 8547.2.

5 (e) (1) In any civil action or administrative proceeding, once  
6 it has been demonstrated by a preponderance of evidence that an  
7 activity protected by this article was a contributing factor in the  
8 alleged retaliation against a former, current, or prospective  
9 employee, the burden of proof shall be on the supervisor, manager,  
10 or appointing power to demonstrate by clear and convincing  
11 evidence that the alleged action would have occurred for legitimate,  
12 independent reasons even if the employee had not engaged in  
13 protected disclosures or refused an illegal order.

14 (2) In an administrative action filed on or after January 1, 2009,  
15 the administrative law judge shall make a finding, after the plaintiff  
16 has completed presenting the evidence in his or her case in chief,  
17 of whether the plaintiff demonstrated by a preponderance of  
18 evidence that an activity protected by this article was a contributing  
19 factor in the alleged retaliation against the complainant. The burden  
20 of proof shall then shift to the supervisor, manager, or appointing  
21 power to demonstrate by clear and convincing evidence that the  
22 alleged action would have occurred for legitimate independent  
23 reasons even if the employee had not engaged in protected  
24 disclosures or refused an illegal order.

25 (3) In an adverse action taken against an employee in which the  
26 employee demonstrates, by a preponderance of the evidence, that  
27 retaliation was a contributing factor to the adverse action taken  
28 against him or her, the employee shall have a complete affirmative  
29 defense to the adverse action.

30 (f) Nothing in this article shall be deemed to diminish the rights,  
31 privileges, or remedies of any employee under any other federal  
32 or state law or under any employment contract or collective  
33 bargaining agreement.

34 SEC. 4. Section 19683 of the Government Code is amended  
35 to read:

36 19683. (a) The State Personnel Board shall, within 10 working  
37 days of receipt of a whistleblower retaliation complaint filed with  
38 the State Personnel Board pursuant to the provisions of Section  
39 8547.8 of this code or Section 87164 of the Education Code,  
40 schedule the matter for an evidentiary hearing before an

1 administrative law judge upon a determination that the complaint  
2 meets all filing requirements mandated by the State Personnel  
3 Board. When the allegations contained in a complaint of reprisal  
4 or retaliation are the same as, or similar to, those contained in  
5 another appeal or complaint, the executive officer may consolidate  
6 the appeals or complaints into the most appropriate format. The  
7 case shall be conducted in accordance with the State Personnel  
8 Board's normal rules governing appeals, hearings, investigations,  
9 and disciplinary proceedings. The administrative law judge shall  
10 make a finding, after the plaintiff has completed presenting the  
11 evidence in his or her case in chief, of whether the plaintiff  
12 demonstrated by a preponderance of evidence that an activity  
13 protected by this article was a contributing factor in the alleged  
14 retaliation against the complainant. The burden of proof shall then  
15 shift to the supervisor, manager, or appointing power to  
16 demonstrate by clear and convincing evidence that the alleged  
17 action would have occurred for legitimate independent reasons  
18 even if the employee had not engaged in protected disclosures or  
19 refused an illegal order. The hearing shall be limited to no more  
20 than 10 hearing days. Any hearing involving consolidated appeals  
21 or complaints shall also be limited to no more than 10 hearing  
22 days, absent good cause.

23 (b) If, after the hearing described in subdivision (a), the State  
24 Personnel Board determines that a violation of Section 8547.3  
25 occurred, the board may order any appropriate relief, including,  
26 but not limited to, at the employee's request and with the  
27 employee's consent, transfer to or placement in any vacant position  
28 for which the employee is qualified, reasonable attorney's fees  
29 and costs for successful prosecution of a retaliation complaint  
30 before the State Personnel Board, reinstatement, backpay,  
31 restoration of lost service credit, if appropriate, compensatory  
32 damages, and the expungement of any adverse records of the state  
33 employee or applicant for state employment who was the subject  
34 of the alleged acts of misconduct prohibited by Section 8547.3.

35 (c) Whenever the board determines that a manager, supervisor,  
36 or employee, who is named a party to the retaliation complaint,  
37 has violated Section 8547.3 and that violation constitutes legal  
38 cause for discipline under one or more subdivisions of Section  
39 19572, it shall impose a just and proper penalty and cause an entry

1 to that effect to be made in the manager's, supervisor's, or  
2 employee's official personnel records.

3 (d) ~~Whenever the board determines that a manager, supervisor,~~  
4 ~~or employee, who is not named a party to the retaliation complaint,~~  
5 ~~may have engaged in or participated in any act prohibited by~~  
6 ~~Section 8547.3, the board shall notify the manager's, supervisor's,~~  
7 ~~or employee's appointing power of that fact in writing. Within~~  
8 ~~four months after receiving the notification, the appointing power~~  
9 ~~shall either serve a notice of adverse action on the manager,~~  
10 ~~supervisor, or employee, or set forth in writing its reasons for not~~  
11 ~~taking adverse action against the manager, supervisor, or employee.~~  
12 ~~The appointing power shall file a copy of the notice of adverse~~  
13 ~~action with the board in accordance with Section 19574. If the~~  
14 ~~appointing power declines to take adverse action against the~~  
15 ~~manager, supervisor, or employee, it shall submit its written reasons~~  
16 ~~for not doing so to the board, which may take adverse action~~  
17 ~~against the manager, supervisor, or employee as provided in~~  
18 ~~Section 19583.5. A manager, supervisor, or employee who is~~  
19 ~~served with a notice of adverse action pursuant to this section may~~  
20 ~~file an appeal with the board in accordance with Section 19575.~~

21 (e) ~~In order for the Governor and the Legislature to determine~~  
22 ~~the need to continue or modify state personnel procedures as they~~  
23 ~~relate to the investigations of reprisals or retaliation for the~~  
24 ~~disclosure of information by public employees, the State Personnel~~  
25 ~~Board, by June 30 of each year, shall submit a report to the~~  
26 ~~Governor and the Legislature regarding complaints filed, hearings~~  
27 ~~held, and legal actions taken pursuant to this section.~~

28 (f) ~~In all cases, including those where individually named~~  
29 ~~respondents have joined in a consolidated hearing, the~~  
30 ~~administrative law judge shall make any orders that may appear~~  
31 ~~just in order to prevent any named party from being embarrassed,~~  
32 ~~delayed, or put to unnecessary expense, and may make other orders~~  
33 ~~as the interests of justice may require during the administrative~~  
34 ~~hearing.~~

35 SEC. 5. Section 19683.5 of the Government Code is amended  
36 to read:

37 19683.5. If a state employee is successful in an action brought  
38 pursuant to Section 19683, the complaining employee shall be  
39 reimbursed for all costs and reasonable attorney's fees incurred  
40 pursuant to Section 995.3.

1     SEC. 6. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

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